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LEBOEUF, LAMB, GREENE & MACRAE
L.L.P.
A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

1875 CONNECTICUT AVENUE, N.W.
WASHINGTON, DC 20009-5728
(202) 986-8000
TELEX: 440274 FACSIMILE: (202) 986-8102

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WRITER'S DIRECT DIAL:
202-986-8192

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Mr. Vernon A. Williams
Secretary, Surface Transportation Board
Room 2215
1201 Constitution Ave., N.W.
Washington, D.C. 20423

EP 582-1

Re: Ex Parte No. 582 (Sub-No.1) Major Rail Consolidation Procedures

Dear Secretary Williams:

Enclosed are the original and 25 copies of the "Reply Comments of Enron Corporation" for filing in the above-referenced proceeding, and a diskette containing the Reply Comments in WordPerfect format.

Also enclosed are three additional copies for date stamping and return via our messenger.

Very truly yours,

Bruce W. Neely

Bruce W. Neely

Attorney for Enron Corporation

Enclosures

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UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
SURFACE TRANSPORTATION BOARD

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EX PARTE NO. 582 (SUB-NO. 1)

MAJOR RAIL CONSOLIDATION PROCEDURES

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REPLY COMMENTS OF ENRON CORPORATION

Michael F. McBride
Bruce W. Neely
LeBoeuf, Lamb, Greene & MacRae, L.L.P.
1875 Connecticut Ave., N.W., Suite 1200
Washington, D.C. 20009-5728
(202) 986-8000 (Telephone)
(202) 986-8102 (Facsimile)

Attorneys for Enron Corporation

Due Date: June 5, 2000
Dated: June 5, 2000

Enron Corporation ("Enron") submitted its Comments on the Board's Advanced Notice of Proposed Rulemaking ("ANPR") on May 16, 2000. Enron urged the Board to require applicants to discuss in their consolidation applications the steps they have taken to implement a secondary market for rail transportation capacity and take the applicants' actions into account in determining whether to approve the proposed consolidation. Enron is submitting these brief Reply Comments because the establishment of a secondary market for rail capacity would enable the Board to bridge the gap between the large number of parties urging the Board to take a more active role in promoting competition in approving a consolidations and several of the railroads that appear to oppose any Board action to enhance competition in approving consolidations.

There is a remarkable degree of consensus among many parties that the Board should do more to enhance competition when the Board approves a consolidation. To be sure, there are differences in approach and detail. But the consensus among a large number of parties -- including shippers, the Departments of Transportation and Agriculture, and some of the railroads -- provide a strong basis for the Board to move forward. Nevertheless, some of the railroads, notably, Norfolk Southern Railway Company, Canadian Pacific Railroad, and CSX Transportation, Inc., appear to oppose any significant change in the Board's existing policies concerning competition. The basis for the opposition, which appears to be most fully articulated by the Association of American Railroads ("AAR"), is that procompetitive changes in the Board's existing policies could undermine differential pricing and this would impair the ability of the railroads to attract capital.

The comments of NS, CSX, CP and AAR may make the Board reluctant to act as forcefully as it should to promote competition. But the choice offered by these commenters -- between enhancing competition and the protecting the financial viability and capital needs of the railroads -- is a false one. The establishment of a secondary market for rail transportation capacity along the lines Enron has proposed would enhance both competition and the profitability of the railroads and their ability to attract capital. Indeed, because a secondary market such as Enron has proposed will allow market forces to identify where rail capacity is most valuable, the secondary market will enable railroads to deploy capital where it is warranted. This will directly contribute to the railroads' return on capital.

Some of the railroads and AAR argue that policies to enhance competition cannot be easily applied to railroads because railroads are capital-intensive and cannot charge average costs on some movements because of competition. But this cannot be used as an argument against Enron's proposal. Enron operates three interstate natural gas pipelines and knows that pipelines are capital-intensive too. Indeed, according to AAR, gas and electric utilities are almost as capital-intensive as railroads. (Rockey V.S. at 6.) Enron also knows that pipelines face intense competition on many transportation routes and cannot charge rates that recover average costs on these routes.[1] But the secondary market for pipeline transportation capacity has flourished and provided customers with competitive alternatives to the pipeline without diminishing the pipelines' ability to attract capital. In fact, interstate pipelines are expanding rapidly even though they are required to allow their customers to re-sell capacity in the secondary market. There is no reason the railroads' ability to attract capital would be impaired by the establishment of a secondary market for rail transportation capacity. As Enron noted in its February 29, 2000 Statement, "[b]y permitting customers to trade capacity in a secondary market, the rail network will be better utilized and the market value of the railroads' capacity will be maximized. Trading

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1 Dr. Robert E. McCormick, in his Verified Statement for the Chemical Manufacturers Association and the American Plastics Council, identifies many other industries besides the pipeline industry that are capital intensive but cannot charge average costs because of robust competition.

capacity rights will allow the railroads to optimize their operations, maximize the value of their assets, and increase their return on capital."

Enron does not seek to have the Board develop the details of a secondary capacity market for rail transportation in this proceeding. Rather, Enron has urged the Board to require applicants to discuss in their consolidation application the steps they have taken to implement a secondary capacity market. Parties to the proceeding would be able to comment, and the Board would be able to take into account the applicants' implementation, and any revisions the Board determines to be necessary, in determining whether to approve the consolidation and whether additional safeguards are needed to protect competition and service. Thus, there is still the need for the Board to consider additional modifications to its consolidation procedures.

WHEREFORE, in consideration of the foregoing, Enron urges the Board to include in its proposed rules the proposal made by Enron in its Comments filed on May 16, 2000 as a way of ensuring broad comment from interested parties, including the railroads.

Respectfully submitted,

Bruce W Neely

Michael F. McBride
Bruce W. Neely
LeBoeuf, Lamb, Greene & MacRae, L.L.P.
1875 Connecticut Ave., N.W., Suite 1200
Washington, D.C. 20009-5728
(202) 986-8000 (Telephone)
(202) 986-8102 (Facsimile)

Attorneys for Enron Corporation

Due Date: June 5, 2000
Dated: June 5, 2000

CERTIFICATE OF SERVICE

I certify that this 5th day of June, 2000, I have served a copy of the foregoing on all parties of record on the Service List in accordance with the Board's Rule of Practice.

Bruce W. Neely

Bruce W. Neely